



**Colorado  
Legislative  
Council  
Staff**

**Initiative # 125**  
**INITIAL FISCAL  
IMPACT STATEMENT**

**Date:** March 6, 2018

**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**LCS TITLE:** LABELING REQUIREMENTS FOR GENETICALLY MODIFIED FOOD

<b>Fiscal Impact Summary</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>State Revenue</b>	<b>\$0</b>	<b><u>less than \$5,000</u></b>
Cash Funds	\$0	less than \$5,000
<b>State Expenditures</b>	<b><u>\$133,203</u></b>	<b><u>\$208,862</u></b>
General Fund	\$133,203	\$208,862

**Note:** This *initial* fiscal impact estimate has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the Blue Book Voter Guide if new information becomes available.

**Summary of Measure**

Initiative #125 amends the Colorado Food and Drug Act to require that certain foods that have been produced with genetic engineering or that have been genetically modified be labeled with the words "contains genetically modified ingredients." The words must occupy a minimum of 12.5 percent of the surface area of the front side of all printed product labels used in packaging, holding, and transport by the manufacturer, and must be maintained by the distributor and retailer. Genetically engineered or genetically modified refers to the process of scientifically altering organisms at the molecular or cellular level.

Under the measure, food is considered to be genetically engineered or modified if the organism from which the food is derived has been treated with a genetically engineered material, or the food contains an ingredient or component that is genetically engineered. Beginning July 1, 2020, if a genetically engineered or genetically modified food is not labeled as required by the measure, the food is considered to be misbranded, and the person who commits the violation is subject to a misdemeanor under current law. Certain foods and food products are exempted from the measure's requirements.

The Colorado Department of Public Health and Environment (CDPHE) is required to establish regulations for labeling foods that have been genetically modified or produced with genetic engineering. These regulations may include procedures for the inspection of food manufacturers and testing of food products to ensure compliance with the measure's labeling requirements.

**Assumptions**

Under the federal National Bioengineered Food Disclosure Standard Law, no state may directly or indirectly establish or continue with any food or seed requirement relating to the labeling or disclosure of whether the food or seed is genetically engineered or was developed or produced

using genetic engineering. The Agricultural Marketing Service in the USDA has until July 28, 2018, to establish a national standard and develop procedures necessary to implement the standard. The fiscal note assumes that Colorado will be able to implement this measure free of litigation from the federal government. If that assumption proves to be false, additional state costs for litigation will be incurred.

### **State Revenue**

Beginning in FY 2020-21, Initiative #125 is anticipated to increase state revenue from fines imposed on any manufacturers, distributors, or retailers that violate the Colorado Food and Drug Act by failing to properly label foods produced with genetic engineering. The precise impact cannot be determined because the courts have the discretion of incarceration, imposing a fine, or both, but less than \$5,000 is expected to be collected per year. Initial violations of the act are subject to a fine of not more than \$1,000, six months imprisonment in a county jail, or both. Subsequent violations are punishable by a fine of up to \$2,000, one year in a county jail, or both. In the past three years, no one has been found guilty of mislabeling a food, drug, device, or cosmetic product. Any new revenue would be credited to the Fines Collection Cash Fund in the Judicial Department.

### **State Expenditures**

This measure is expected to increase state General Fund expenditures in the CDPHE by \$133,203 and 1.4 FTE in FY 2019-20, and by \$208,862 and 1.5 FTE in FY 2020-21 and each year thereafter. The measure may also increase workload in the Judicial Department. The measure is not expected to affect state spending in FY 2018-19.

**Department of Public Health and Environment.** In FY 2019-20, the CDPHE will develop rules for administering the labeling program for genetically engineered foods through a stakeholder process and conducting outreach to businesses affected by the rules. This effort will require \$133,203 and 1.4 FTE for environmental protection specialists. Legal services to support rulemaking will be provided within existing agency appropriations.

Beginning in FY 2020-21, the labeling program will be operational and CDPHE staff will perform manufacturer inspections, gather samples, and have food tested by an independent laboratory in response to consumer complaints. These efforts will require \$208,862 and 1.5 FTE in FY 2020-21 and each year thereafter. The frequency of inspections, sampling, and testing will depend on the rules established by the department and the frequency of consumer complaints. This fiscal estimate assumes, however, that at least 200 food samples will be tested annually, at a cost of \$300 per test. Also included in the annual expenditures is \$2,500 for maintenance of the web-based module for tracking complaints and \$9,556 for a vehicle and mileage for staff travel to manufacturer facilities. Expenditures are detailed in Table 1.

<b>Table 1. Expenditures Under Initiative #125</b>		
<b>Cost Components</b>	<b>FY2019-20</b>	<b>FY2020-21</b>
Personal Services	\$101,977	\$111,248
FTE	1.4 FTE	1.5 FTE
Operating Expenses and Capital Outlay Costs	10,736	1,425
Travel		9,556
Software User Fee		2,500
Samples and Laboratory Testing		62,000
Employee Benefits and Insurance	20,490	22,133
<b>TOTAL</b>	<b>\$133,203</b>	<b>\$208,862</b>

**Judicial Department.** To the extent that any manufacturers, distributors, or retailers are prosecuted for new cases of misbranding, workload for trial courts will increase. If any of these parties are indigent, workload and costs will also increase for the Office of the State Public Defender or Office of the Alternate Defense Counsel. If any convictions result, workload may also increase for the Probation Services Division. These impacts are assumed to be minimal.

### **Local Government Impact**

Initiative #125 impacts local governments by creating a new element to the misdemeanor crime of mislabeling a food, drug, device, or cosmetic product which could increase workload for district attorneys if additional cases are filed. The precise impact cannot be determined because the courts have the discretion of incarceration, imposing a fine, or both, but the impact on county jails is expected to be minimal. No one has been found guilty of mislabeling a food, drug, device, or cosmetic product in the past three years. Initial violations are punishable by up to six months in a county jail; subsequent violations are punishable by a jail sentence of up to one year. Estimated costs to house an offender in a county jail vary from \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$54.39 to house state inmates.

**Denver County Court.** The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill where a product is mislabeled. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill within Denver County.

### **Economic Impact**

By creating a state specific labeling requirement, Initiative #125 will increase costs for farmers, food manufacturers, distributors, and retailers for record-keeping, product verification, and separate product storage and handling processes for genetically engineered products. To the extent these costs are passed on to consumers, food prices will increase for Coloradans.

## **Effective Date**

The measure takes effect July 1, 2020, if approved by voters at the 2018 general election.

## **State and Local Government Contacts**

Information Technology

Law

Public Health and Environment

### **Abstract of Initiative 125: LABELING REQUIREMENTS FOR GENETICALLY MODIFIED FOOD**

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of March 6, 2018, identifies the following impacts:**

The abstract includes estimates of the fiscal impact of the initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.

**State expenditures.** Initiative #125 requires that certain foods that have been produced with genetic engineering or that have been genetically modified be labeled with the words "contains genetically modified ingredients." The Department of Public Health and Environment must establish rules and take action to implement the measure's requirements, which will increase state expenditures by \$133,203 in FY 2019-20 and \$208,862 in FY 2020-21 and thereafter.

**State revenue.** Initiative #125 subjects food manufacturers, distributors, and retailers to penalties for misbranding of food. This potentially increases state revenue from fines by less than \$5,000 per year beginning in FY 2020-21.

**Local government.** The measure potentially increases costs for local governments to prosecute and incarcerate individuals who violate the provisions of the measure.

**Economic impact.** By creating a state specific labeling requirement, Initiative #125 will increase costs for farmers, food manufacturers, distributors, and retailers for record-keeping, product verification, and separate product storage and handling processes for genetically engineered products. To the extent these costs are passed on to consumers, food prices will increase for Coloradans.